

Appl. No. 10/802,166
Atty. Docket No. 9184M
Amdt. dated 05/30/2006
Reply to Office Action of 11/30/2005
Customer No. 27752

REMARKS

Claim Status

Claims 1 -25 are pending in the present application. No additional claims fee is believed to be due.

35 USC §112 Rejections

Claims 1 and 2 have been rejected under §112, second paragraph, as the Office Action asserts this claim as being indefinite for failing to point out and distinctly claim the subject matter which applicant regards as the invention. Specifically, the Examiner has asserted that it is unclear what constitutes an "effective amount" of zinc-containing layered material and an "effective amount" of a surfactant in instant Claim 1 and an "effective amount" of a pyrrithione or polyvalent metal salt of pyrrithione in instant Claim 2. In light of this rejection, Claim 1 has been amended to incorporate the matter of Claim 6. Support for further defining the effective amount of the zinc-containing layered material can be found in the specification on page 4, line 32 to page 5, line 2. Claim 2 has been further amended to incorporate the matter of Claim 5 in order to further define the effective amount of a pyrrithione or polyvalent metal salt of pyrrithione.

Claims 5 and 6 are canceled without prejudice.

It is believed these changes do not involve any introduction of new matter. Consequently, entry of these changes is believed to be in order and is respectfully requested.

Rejection Under 35 USC §102(b) Over U.S. 4,933,101 (Cilley et al.)

Claims 1, 4, 6-8, 12-17 have been rejected under 35 USC §102(b) as being anticipated by US 4,933,101 to Cilley et al. (hereinafter "Cilley").

Cilley discloses liquid automatic dishwashing detergent compositions comprising from 0% to about 5% of detergent surfactant; from about 5% to about 40% of detergency builder; hypochlorite bleach to yield available chlorine in an amount of from 0% to about 2.5%; from about 0.25% to 10% of a thickening agent; and an amount of an insoluble inorganic zinc compound, having an average particle size less than about 250 microns, that will provide the composition with from about 0.01% to about 1.0% zinc; said composition having an apparent yield value of from about 40 to about 800 dynes/cm². Such compositions are asserted to be useful for inhibition of glassware corrosion in the dishwasher.

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In contrast, Claims 1, 4, 6-8, 12-17 are directed to a personal care composition comprising from about 0.001% to about 10% of a zinc-containing layered material; from about 2% to about 50% of a surfactant including a surfactant with an anionic functional group; wherein the zinc-containing layered material has a relative zinc lability of greater than about 15%. Therefore, Cilley is directed to a field of art outside the claimed invention. More specifically, the present claims relate to personal care compositions wherein Cilley relates to dishwashing detergent compositions.

In view of the above remarks, it is requested that the Examiner reconsider and withdraw this rejection under 35 USC §102(b).

Rejection Under 35 USC §102(b) Over WO 01/00151 (Gavin et al.)

Claims 1-25 have been rejected under 35 USC §102(b) as being anticipated by International Patent Application No. WO 01/00151 to Gavin et al (hereinafter "Gavin et al.").

Gavin et al. discloses topical compositions for the treatment of microbial infections on the skin or scalp. Specifically, the composition of Gavin et al. includes from about 0.001% to about 10% by weight of the composition, of an anti-microbial active selected from the group consisting of polyvalent metal salts of pyrithione, from about 0.001% to about 10%, by weight of the composition, of a metal ion source selected from the group consisting of zinc salts, copper salts, silver salts, nickel salts, cadmium salts, mercury salts, bismuth salts and mixtures thereof and a topical carrier for the anti-microbial active and the metal salt.

The present invention, as now amended, is directed to a personal care composition comprising from about 0.001% to about 10% of a zinc-containing layered material; from about 2% to about 50% of a surfactant including a surfactant with an anionic functional group; wherein the zinc-containing layered material has a relative zinc lability of greater than about 15%. Gavin et al. does not disclose or suggest a zinc-containing layered material having a relative zinc lability of greater than about 15%. The Office Action asserts that since the disclosure of Gavin et al. has the same zinc-containing layered material as the instantly claimed invention, then it would inherently have the same relative zinc lability of greater than about 15%.

The Office Action asserts that the Examiner interprets that the zinc salt can be an insoluble particulate zinc carbonate and thus anticipates instant Claim 14, directed to zinc-containing layered material. Therefore, Applicants respectfully submit that the insoluble

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particulate zinc carbonate disclosed in Gavin et al. is not synonymous with the zinc-containing layered material, i.e. a basic zinc carbonate, of the present invention. As defined in the present specification on pages 4, line 32 to page 6, line 7, the zinc-containing layered material, such as basic zinc carbonate, are those with crystal growth primarily occurring in two dimensions (page 5, lines 5-10) wherein zinc carbonate is not considered by one of skill in the art to be a layered structure. The ideal stoichiometry for basic zinc carbonate is represented by $\text{Zn}_5(\text{OH})_6(\text{CO}_3)_2$, but the actual stoichiometric ratios can vary slightly and other impurities may be incorporated in the crystal lattice (page 6, lines 5-7). Zinc carbonate, as generally included in Gavin et al., is generally known by one of skill in the art to have the chemical formula ZnCO_3 . Thus, Gavin et al does not disclose a "zinc-containing layered material" as is required in the present invention.

Therefore, when one compares the composition of Gavin et al. to the instantly claimed invention, the compositions are not comprised of the exact same materials and would not inherently have the exact same properties i.e. would not inherently have the same relative zinc lability of greater than about 15%.

. In light of the above remarks, it is requested that the Examiner reconsider and withdraw this rejection under 35 USC §102(b).

Rejection Under 35 USC §103(a) Over US 5,227,156 (Wiese) in view of US 5,883,085
(Blank et al.)

Claims 1-17, 19-21 and 25 have been rejected under 35 USC §103(a) as being unpatentable over US 5,227,156 (hereinafter "Wiese") in view of US 5,883,085 (hereinafter "Blank et al.")

In order to establish a *prima facie* case of obviousness, the Examiner must show that (1) there is some suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the reference or to combine reference teachings, (2) there is a reasonable expectation of success, and (3) all of the limitations of the claims are taught or suggested in the prior art (M.P.E.P. 2143).

This 103(a) rejection is traversed for the following reasons. First, Wiese in view Blank et al does not establish a *prima facie* case of obviousness because it does not teach or suggest all of claim limitations of Claims 11-17, 19-21 and 25.

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Wiese in view of Blank et al. does not teach or suggest all of the claim limitations of Claims 1-17, 19-21 and 25 and, therefore, does not establish a *prima facie* case of obviousness (see MPEP 2143.03). Specifically, as the Office Action has asserted on page 7 of this Office Action, Wiese does not expressly disclose zinc carbonate as one of the zinc compounds in the composition, although the Office Action notes that Wiese does disclose zinc compounds of organic acids. The Office Action further asserts that Blank et al. discloses topical skin formulations comprising zinc carbonate as a skin protectant. Therefore, it is asserted that it would have been obvious to one of ordinary skill in the art to modify the anti-dandruff shampoo of Wiese by adding zinc carbonate as suggested by Blank et al to produce the instant invention.

However, similar to the remarks made above, the zinc carbonate disclosed by Blank et al is not the same as the zinc-containing layered material, as disclosed and required by the present invention. As defined in the present specification on pages 4, line 32 to page 6, line 7, the zinc-containing layered material, such as basic zinc carbonate are those with crystal growth primarily occurring in two dimensions (page 5, lines 5-10) wherein zinc carbonate is not considered by one of skill in the art to be a layered structure. The ideal stoichiometry for basic zinc carbonate is represented by $\text{Zn}_5(\text{OH})_6(\text{CO}_3)_2$, but the actual stoichiometric ratios can vary slightly and other impurities may be incorporated in the crystal lattice (page 6, lines 5-7). Zinc carbonate, as generally included in Blank et al, is generally known by one of skill in the art to have the chemical formula ZnCO_3 . Thus, zinc carbonate as disclosed in Blank et al does not disclose a "zinc layered material" as is required in the present invention.

Therefore, Wiese in view of Blank et al does not establish a *prima facie* case of obviousness because it does not teach or suggest all of claim limitations. Therefore, the claimed invention is unobvious and Applicants respectfully request that the rejection should be withdrawn.

The Double Patenting Rejection

1) Claims 1-3, 5, 14-17 and 23-24 have been provisionally rejected on the ground of nonstatutory obvious-type double patenting as being unpatentable over claims 1, 5-9, 13 and 23-25 of copending Application No. 10/803,126.

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Claim 1 of the Application 10/803,126 is directed to a composition having an effective amount of pyrithione or a polyvalent metal salt of a pyrithione and an effective amount of a zinc-containing layered material which provides an augmentation factor greater than 1.

In contrast, the instant invention is directed to a composition comprising from about 0.001% to about 10% of a zinc-containing layered material; from about 2% to about 50% of a surfactant including a surfactant with an anionic functional group; wherein the zinc-containing layered material has a relative zinc lability of greater than about 15%.

The currently claimed invention is not directed to a composition containing an augmentation factor greater than 1. Further, the '126 composition is not directed to or required relative zinc lability of greater than about 15% for a zinc-containing layered material. These 2 claim sets are patentable distinct and each of the specification and data demonstrate that the determination of an augmentation factor or relative zinc lability is not a matter of routine optimization. Augmentation and Relative Zinc lability are two distinct components. An "augmentation factor" is defined, which is the ratio of the MIC (minimum inhibitory concentration) with and without an augmenting agent (at a specified concentration) (Page 28, lines 14-16 of '126 application).

Therefore, Applicants respectfully request reconsideration and removal of this double patenting rejection.

2) Claims 1-3, 5-7, 9, 14-20 have been provisionally rejected on the ground of nonstatutory obvious-type double patenting over claims 1, 2, 38-41, 43-50 and 54-56 of copending U.S. Application No. 10/742,557. Claims 1, 7, 8, 10, 11 and 14-16 have been provisionally rejected on the ground of nonstatutory obvious-type double patenting over claims 1, 5, 11-13 and 17-19 of copending U.S. Application No. 10/392,422. Claims 1-25 provisionally rejected on the ground of nonstatutory obvious-type double patenting over claims 1-3, 6-15, 17-22 and 26-32 of copending U.S. Application No. 11/216,520. Claims 1-25 provisionally rejected on the ground of nonstatutory obvious-type double patenting over claims 1-3, 8-28 of copending U.S. Application No. 11/100,648

In response to the 4 above mentioned rejections, Applicants are submitting herewith Terminal Disclaimers. Applicants contend that the Terminal Disclaimers moot these four double patenting rejections.

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Conclusion

In light of the above remarks, it is requested that the Examiner reconsider and withdraw the rejection under 112, 102(b) and 103(a). Early and favorable action in the case is respectfully requested.

This response represents an earnest effort to place the application in proper form and to distinguish the invention as now claimed from the applied references. In view of the foregoing, reconsideration of this application, entry of the amendments presented herein, and allowance of Claims 1-4 and 7-25 is respectfully requested.

Respectfully submitted,

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